(1)

Supreme Court, U.S.
FILED

011038 DEC 13 2001

OFFICE OF THE CLERK

No.

In the
Supreme Court of the United States

ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH
a/k/a Debra L. Lynch & Debra Franchi, Deceased

Dean Lynch,
Petitioner

Patricia Flaherty, Linda A. Kacewicz,
and Michael P. Franchi,
Respondents

On Petition for Writ of Certiorari
To The New York Court of Appeals

PETITION FOR WRIT OF CERIORARI

Dean Lynch, pro se
Petitioner
101 Greenbush Road
Tappan, NY 10983
845-359-7161

62 pp

INTRODUCTORY STATEMENT

Decedent died married and a domiciliary of the State of New York. Petitioner, surviving spouse of Decedent, filed a Petition for Administration in Rockland County, New York, alleging there was no valid will. Respondents, Decedent's siblings, filed a Petition for Probate of a 1995 will in Middlesex County, Massachusetts. The Commonwealth of Massachusetts entered a default probate decree based upon the petition which misrepresented that the deceased was "Divorced". The Rockland Surrogate, who had abated the divorce action, granted said default probate decree full faith and credit dismissing without a hearing Petitioner's claim that the Commonwealth of Massachusetts lacked jurisdiction. Jurisdiction is the cornerstone of due process and no court has addressed that issue and/or afforded an opportunity to be heard on same, full, fair or otherwise.

All men and women are entitled to their day in Court. Petitioner asserts that this basic right has been denied in the State of New York.

QUESTIONS PRESENTED FOR REVIEW

I. Before full faith and credit is granted to a judgment in the courts of other states does constitutional due process require an inquiry into jurisdiction?

II. Does constitutional due process of law include known fraud being entitled to full faith and credit?

III. Does constitutional due process allow the dismissal of an action based upon evidence not properly before the tribunal and not subject to confrontation?

IV. Without jurisdiction, does notice satisfy the constitutional due process requirement for a full and fair opportunity to be heard?

V. Does equal protection under the law require a court to protect the interests of an unrepresented infant?

VI. Does the denial of appellate review without opinion evidence an arbitrary and capricious denial of due process?

VII. How can equal protection and due process under the law be insured in the 21st Century?

PARTIES TO THE PETITION

DEAN LYNCH, Petitioner
Husband of DEBRA LYNCH, Deceased

PATRICIA FLAHERTY, LINDA A. KACEWICZ,
AND MICHAEL P. FRANCHI,
Respondents
Siblings of DEBRA LYNCH, Deceased

The Respondents are represented by:

BIRBROWER, MONTALBANO,
CONDON & FRANK, P.C.
67 North Main Street
New City, New York 10956
(845) 634-7010
and
BLANK ROME TENER GREENBLATT LLP
405 Lexington Avenue
New York, New York 10174
(212) 885-5000
Co-Counsel New York

HILL & BARLOW, P.C.
One International Place
Boston, MA 02110
(617) 428-3000
and
LOURIE & CUTLER, P.C.
60 State Street
Boston, MA 02109
(617) 742-6720
Co-Counsel Massachusetts

TABLE OF CONTENTS

PAGE

INTRODUCTORY STATEMENT i

QUESTIONS PRESENTED FOR REVIEW ii

PARTIES TO THE PETITION iii
TABLE OF CONTENTS iv
TABLE OF AUTHORITIES v

PETITION 1

OPINION BELOW 2
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

HOW THE FEDERAL QUESTIONS WERE
RAISED AND ADDRESSED BELOW 10

REASONS FOR GRANTING THE WRIT 11
I. 11
II. 13
III. 15
IV 16
V 20
VI 22
VI 24

CONCLUSION 26

APPENDIX INDEX 29

TABLE OF AUTHORITIES

PAGE

CHANDLER V. FRETAG, 348 U.S.3 4
THOMPSON V. WHITMAN, 85 U.S. 457 7,11,13
COLE V. CUNNINGHAN, 133 U.S. 107 7
SIMMONS V. SAUL, 138 U.S. 439 7
TILT V. KELSEY, 207 U.S. 43 7
CHRISTMAS V. RUSSELL, 5 Wallace 290 8
WILLIAMS V. STATE OF NORTH CAROLINA, 324 U.S. 226 11
GRANNIS V. ORDEAN, 234 U.S. 385 11
ARMSTRONG V. MANZO, 380 U.S. 545 11
DURFEE V. DUKE, 375 U.S. 106 12,16
IN RE BURWELL, 350 U.S. 521 14
BALDWIN V. IOWA STATE TRAVELING MEN'S ASSN., 283 U.S. 522 17,18,19
CHICOT COUNTY DRAINAGE V BAXTER STATE BANK, 308 U.S. 37 18
DRED SCOTT V. SANDFORD, 19 How. 393 23
IN RE AMENDMENT TO RULE 39, 500 U.S. 13 24
BOGUSLAVSKY V. KAPLAN, 159 F.3d 715 (2nd Cir.) 26

No.

In the
Supreme Court of the United States

ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH
a/k/a Debra L. Lynch & Debra Franchi, Deceased

Dean Lynch,
Petitioner

Patricia Flaherty, Linda A. Kacewicz,
and Michael P. Franchi,
Respondents

On Petition for Writ of Certiorari
To The New York Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Dean Lynch, pro se
101 Greenbush Road
Tappan, NY 10983
845-359-7161

OPINION BELOW

MATTER OF LYNCH, 279 A.D. 2d 578 (2001)
MATTER OF LYNCH, 719 N.Y.S. 2d 605 (2001)

JURISDICTION

Appeal taken by Dean Lynch, Petitioner, as to the Decision and Order of the Rockland County, New York Surrogate, Alfred J. Weiner , dated September 8, 1999. Appendix D
Said Decision and Order was appealed resulting in the unanimous affirmation by the Appellate Division, Second Department decision No. 4159B entered January 22, 2001. Appendix C
Said decision of January 22, 2001 was the subject of a Motion for Reargument or Leave to Appeal to the Court of Appeals of the State of New York and was denied without opinion on March 15, 2001. Appendix B
Petitioner filed a Notice of Motion for Leave to Appeal and Sua Sponte Examination of Merits to the Court of Appeals of the State of New York, which was denied without opinion on September 20, 2001. Appendix A

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1257, as well as the United States Supreme Court's Constitution supervisory function over the states and to insure "Equal Justice Under the Law."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. ARTICLE IV. Section 1. : Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

U.S. CONST. AMEND. V: No person shall...be deprived of life, liberty, or property, without due process of law;...

U.S. Const. Amend. XIV: No state shall...deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law.

NEW YORK CIVIL PRAC. L&R (CPLR)
Sec. 5401: ...a judgment, decree, or order of a court of the United States or other court is entitled to full faith and credit in this state, except one obtained by default in appearance or confession of judgment....

STATEMENT OF THE CASE

Petitioner, a citizen of the State of New York, is the Widower of the Decedent, and father of her only child. His in-laws, the Respondents, obtained a death certificate in Massachusetts, which stated Decedent was "Divorced". Utilizing this death certificate, the Respondents filed a Petition in Probate in Massachusetts representing there was no surviving spouse in order to probate a 1995 Will. Petitioner, pro se, filed a special appearance contesting the jurisdiction of the Massachusetts Court.

The Massachusetts Court entered a Probate Decree by default without a hearing and/or addressing the paramount issue of subject matter jurisdiction.

The New York Surrogate, who had abated a divorce action initiated by the Respondents, granted the Massachusetts default probate decree full faith and credit and dismissed without a hearing and/or addressing subject matter jurisdiction an earlier Petition for Administration filed by Petitioner. Said Petition was first in time and right and had joined the issue of jurisdiction. The Respondents manipulated the Courts in New York and improperly presented the Massachusetts default Probate Decree after the matter had been submitted for decision. Although Petitioner's attorney had previously requested a hearing on jurisdiction, he was never given an opportunity to reply to that untimely and improper submission. Clearly the denial of Petitioner's day in court violated his rights to due process and is contrary to holdings of this Honorable Court.

> If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.CHANDLER V. FRETAG, 348 U.S. 3 (1954)

The application of full faith and credit by the New York Courts to the Massachusetts' default probate decree has denied Petitioner all of his rights, including standing, as surviving spouse of Decedent.

Prior to her death on September 5, 1996, Decedent had executed three wills: December 1993, January 1994 and June 1995.

On November 6, 1998, Petitioner filed a Petition for Administration Proceedings in Rockland County, New York, alleging that Decedent died without a valid will as a result of her lack of capacity caused by her brain cancer in 1992. (See Appendix I: As per DANA FARBER CANCER INST. on 12-1-93 decedent lacked understanding of the concepts of "coma or death." Petitioner was required to sign medical authorization.)

On November 19, 1996, Surrogate Weiner dismissed the Petition for the failure to attach the alleged invalid will of 1995.

Petitioner filed an Amended Petition on November 23, 1996 with the 1995 and 1993 wills attached.

On November 24, 1998, Respondents filed for probate of the 1995 will in Middlesex County, Massachusetts. In their Petition they represented that Decedent had died without a surviving spouse and as a resident of Weston, Massachusetts. (See Appendix E) Petitioner was served as the guardian of the infant child and filed a special appearance in Massachusetts objecting to subject matter jurisdiction.

Respondents filed an appearance in the Rockland County proceeding and made a motion to dismiss for lack of jurisdiction.

Petitioner's attorney responded to the motion, which was returnable April 23, 1999 and requested a hearing on the issue of jurisdiction. On April 26, 1999, the matter was submitted to the Rockland County Surrogate.

On June 15, 1999, the Middlesex County Probate Court entered a default probate decree, accepting the alleged 1995 will which was based upon the misrepresentation of Richard Renehan, Esq. of Hill & Barlow, PC that Petitioner was the "ex-husband" and Decedent had been living in Massachusetts for "two years after the divorce." (See Appendix F; Note: In October, 1999, Mr. Renehan admitted to the court these statements were untrue, but the Massachusetts Court refused to vacate the decree.)

On July 27, 1999, Respondents' New York attorney forwarded to the Rockland County Surrogate and Petitioner's attorneys, Ezra & Howe, the June 15, 1999 default probate decree from the Middlesex County Probate Court.* The Petition for Probate containing the misrepresentation that there was no surviving spouse was part of the decree and the Memorandum of Decision set forth not only that the decree was by default, but that the "issue of domicile" had not been raised, let alone addressed and decided. (See Appendix E @ Memorandum and Appendix G)

On September 8, 1999, Alfred J. Weiner, the Rockland County Surrogate, deferred to the Massachusetts Court, granted the default probate decree full faith and credit; and dismissed the proceeding. (Appendix D) This action was taken without a hearing and/or any opportunity given to Petitioner's attorney to address the improper submission of

---

* Appeal period in Massachusetts is 30 days from entry, Petitioner's attorneys received notice of the June 15, 1999 default probate decree on July 30, 1999.

the Massachusetts decree and jurisdiction. The failure to have a hearing to address the threshold issue of subject matter jurisdiction and the court's reliance upon an improper and untimely filing as dispositive was a fundamental denial of due process of law.

As a direct result of the New York dismissal and Massachusetts' failure to recognize Petitioner as the surviving spouse, Petitioner has been denied all of his rights, in violation of the Fifth and Fourteenth Amendment. An Appeal was taken, by Petitioner, pro se, to the New York Supreme Court Appellate Division-Second Department. Petitioner asserted that the failure of the Surrogate to conduct a hearing as to the issue of domicile violated his constitutional rights to due process, which demands "a full and fair opportunity to litigate the issue."

> It is the settled doctrine of this court that the constitutional provision that full faith and credit shall be given in each state to judicial proceedings of the other states, does not preclude inquiry into jurisdiction of the court in which the judgment is rendered over the subject-matter or parties affected by it, nor into the facts necessary to give such jurisdiction. Thompson v. Whitman 85 U.S. 457 Wall 457 (1873); Cole v. Cunninghan 133 U.S. 107 (1890)
>
> Simmoms v. Saul ,138 U.S. 439 (1891)

This Court has found that when "full faith and credit is demanded for a judgment in the courts of other states, an inquiry into jurisdiction is always permitted". Tilt v. Kelsey, 207 U.S. 43 (1907) Petitioner asserts "an inquiry into jurisdiction" is required to insure due process under the law.

Petitioner's position is that the Commonwealth of Massachusetts lacked subject matter jurisdiction, making its actions ultra virus and rendering its decree null and void.

> Where a court has jurisdiction, it has right to decide every question, which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But, if it acts without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void.
>
> Christmas v. Russell, 5 Wallace 290

In the Appeal before the Second Department, Petitioner set forth the facts concerning a divorce action the Respondents had commenced in 1995 after taking Decedent to Massachusetts for a two week vacation and detaining her there. The undisputed facts showed that Surrogate Weiner, acting as a Supreme Court Justice, had been directly involved with a failed proposed stipulation of settlement in New York and that he had abated the divorce action. Surrogate Weiner had personal knowledge of the facts and circumstances, which gave rise to Petitioner's attack upon the jurisdictional issue based on domicile and competency.

The Appellate Division-Second Department found; "the Surrogate's Court providently exercised its discretion by giving full faith and credit to the Massachusetts probate decree" and the Court "need not reach the petitioner's remaining contentions." (Appendix C) Those contentions included jurisdiction, denial of due process and the failure of the Surrogate to protect the interests of Decedent's child. The Second Department failed to address the procedural denial of due process as to full faith and credit being given to

a default decree in violation of New York CPLR 5401, and the substantive denial of due process as to full faith and credit being given to a default decree without a finding of jurisdiction by either court. Moreover, the Second department failed to address the entitlement of full faith and credit to a decree, which was based upon a known misrepresentation of a material fact, denied Petitioner any standing or status in the Massachusetts action as surviving spouse.

The Second Department's failure to address the "remaining contentions" violated not only Petitioner's rights under the 5th and 14th Amendments, but those of Decedent's child who has been deprived any benefit or any accounting in the five years since her mother's death. Not only has there been no accounting as to the estate, but none as to the numerous trusts in which the child is vested which have an estimate value in excess of $100 million. (See Appendix H, wherein Respondents' attorney advised the New York court that there is "no absolute assurances" there will "be assets on hand" for the decedent's child in light of the fact the trusts state "the principal may be sprayed disproportionately among the beneficiaries". The Respondents are trustees as well as beneficiaries of several of the trusts. See Appendix L: When the Commonwealth of Massachusetts was presented with proof of "No Divorce" from NY, MA & NJ, the Office of Vital Statistics refused to amend the death certificate. As a result the title to Petitioner's home is unmarketable and he can not access the equity therein forcing him to cash in a life insurance policy to tend to the needs of the child and himself.)

HOW THE FEDERAL QUESTIONS WERE RAISED AND ADDRESSED BELOW

The Constitutional guarantee of due process of law was raised to the Appellate Division, Second Department in the Notice of Appeal filed by Petitioner on September 27, 1999 and was raised in the "Question Presented" as to the denial of Petitioner's attorney's request for a hearing. The Appellate Division, Second Department failed to address the question of due process of law directly, but its opinion implies it is within a court's discretion to disregard it. Appendix C

The issue of due process and all the others were raised to the Court of Appeals by Notice of Motion for Leave to Appeal and Sua Sponte Examination of Merits. However, it was not addressed. The Motion was denied without opinion or comment except: "due deliberation having been thereupon had,..".Appendix A

REASONS FOR GRANTING THE WRIT

I. Before full faith and credit is granted to a judgment in the courts of other states does constitutional due process require an inquiry into jurisdiction?

> In any other State it would be regarded like any foreign judgment; and as to a foreign judgment it perfectly well settled that the inquiry is always open whether the court by which it was rendered had jurisdiction of the person or the thing. "Upon principle," says Chief Justice Marshall, "it would seem that the operation of every judgment must depend on the power of the court to render that judgment; or, in other words, on its jurisdiction over the subject-matter which it has determined."
>
> Thompson v. Whitman, 85 U.S. 457 (1873)

It is undisputed that "domicile is the foundation of probate jurisdiction". Williams v. State of North Carolina, 325 U.S. 226 (1945) The domicile/jurisdiction issue was raised, by Petitioner, in both New York and Massachusetts. Although a jurisdictional hearing was requested in writing by Petitioner in each of the states none was granted.

> A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean,, 234 U.S. 385, 394. It is the opportunity which must be granted at a meaningful time and in a meaningful manner.
>
> Armstrong v. Manzo, 380 U.S. 545 (1965)

Respondents made a motion to the New York Surrogate returnable April 23, 1999 to intervene and to dismiss the proceeding. In response, Petitioner requested that there be an

immediate hearing on the issue of domicile of decedent. The New York Surrogate never conducted an inquiry.

On June 15, 1999 the Massachusetts Court entered the default probate decree after disregarding all Petitioner's written requests as well as Respondents' oral suggestion that a hearing be had to dispose of "his challenge to jurisdiction". (See Appendix F)

There is no dispute that the Massachusetts probate decree is by default and that none of the issues, particularly jurisdiction, were "fully litigated or judicially determined". The Massachusetts default probate decree was not entitled to be afforded the "res judicata effect" to bar the issues being "retried in another State in litigation between the same parties". Durfee v. Duke, 375 U.S. 106 (1963) Therefore, the Massachusetts probate decree was not entitled to full faith and credit in New York.

Moreover, New York "had the power and, upon proper averments, the duty to inquire into the jurisdiction of the" Massachusetts court "to render the decree". Durfee v. Duke. Supra. The New York Surrogate disregarded this "duty to inquire into jurisdiction"; and granted full faith and credit to the Massachusetts default probate decree dismissing the New York proceedings. As a result, Petitioner was denied his rights without due process of law under the Federal Constitution. Petitioner asserts that settled case law requires an inquiry into jurisdiction as a condition precedent to the application of full faith and credit.

> ....Congress giving full faith, credit, and effect to judgments of each State in every other State do not refer to judgments rendered by a court having no jurisdiction...if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void.
>
> Thompson v. Whitman, 85 U.S. 457 (1873)

Petitioner acknowledges that domicile is dispositive of subject matter jurisdiction. Personal jurisdiction was never addressed in Massachusetts or its effect on the granting of full faith and credit in New York. Although raised to the Appellate Courts of the State of New York that issue was not addressed. Petitioner respectfully adopts the reasoning of the cases of this Honorable Court cited above as to that issue and its bar to the granting of full faith and credit without inquiry.

II. Does constitutional due process of law include known fraud being entitled to full faith and credit?

In America, we rely on due process of law to insure justice. There is no justice without truth. The truth is that Petitioner is the surviving spouse of decedent. Respondents misrepresented that decedent was "Divorced" in obtaining the death certificate. The Massachusetts default probate decree was fraudulently obtained utilizing this death certificate and a petition, which state there was no surviving spouse. This fraud was committed after the Respondents and their attorneys were fully aware that Surrogate Weiner, acting as a Supreme Court Justice, had abated the divorce action. Surrogate Weiner had been directly involved in the attempt to dispose of the divorce action by a proposed stipulation of settlement. In light of decedent's illness, the parties had attempted to settle the divorce by insuring that decedent's daughter would be economically secure and independent. Surrogate Weiner had overseen the negotiations and acknowledged decedent's circumstances and was fully aware of her limitations. Unfortunately, decedent died before the proposed stipulation could be completed; and as a result of decedent's death its intent and implementation became impossible. As a result Surrogate Weiner abated the divorce action. Therefore, when Surrogate Weiner was presented

with the Massachusetts default probate decree, which had the petition as a part thereof, he knew fraud had been committed upon the Massachusetts Court because no surviving spouse was included as an heir at law. The filings properly before Surrogate Weiner requesting the motion to intervene and to dismiss, as well as the request for a hearing on domicile/jurisdiction, include evidence concerning these and other misrepresentations.

Surrogate Weiner was presented with a default probate decree of decedent who died without a surviving spouse and he was requested to entitle it to full faith and credit. Surrogate Weiner knew decedent had a surviving spouse who was before him requesting an inquiry into jurisdiction/domicile. Surrogate Weiner dismissed the New York proceedings based upon the Massachusetts default probate decree of the 1995 will. The Second Department stated that, "the Surrogate's Court providently exercised its discretion by giving full faith and credit to the Massachusetts probate decree". (Appendix C)

Petitioner asserts that this abuse of discretion which included known fraud being entitled to full faith and credit violated his rights to due process and equal protection under the 5th and 14th Amendments of the United States Constitution.

> As long as that court keeps within the bounds of judicial discretion, its actions are not reviewable.
>
> In Re Burwell, 350 U.S. 521 (1956)

Under the facts presented to the Second Department and Court of Appeals "the bounds of judicial discretion" in New York include not only disregarding the law, but the truth. Surrogate Wiener knew CPLR 5401 was clear as to a foreign default decree. Surrogate Weiner knew Petitioner was the surviving spouse, and he had personal acknowledge that supported Petitioner's contentions as to domicile, as well as

the allegations as to the validity of the 1995 will, as well as the wills of 1993 and 1994.

III. Does constitutional due process allow the dismissal of an action based upon evidence not properly before the tribunal and not subject to confrontation?

The New York Surrogate had before him in April 1999 Respondents' motion to intervene and dismiss the proceeding and Petitioner's request for a hearing on domicile.
The Massachusetts Court entered its default probate decree on June 15, 1999, which was forwarded to the New York Surrogate on July 27, 1999.
The New York Surrogate dismissed the proceeding without any hearing or giving Petitioner's counsel any opportunity to be heard as to the Massachusetts' default probate decree. It is clear the New York Surrogate acted upon and relied on the Massachusetts decree which did not even exist at the time the motion and request for hearing was submitted; and that decree was not properly before the court. If in his judicial discretion, the New York Surrogate felt it relevant and proper to honor the default decree, due process demanded that notice to Petitioner's attorney be given of his intent to reopen the matter. The failure to reopen denied Petitioner the right of confrontation as to this untimely and improper filing. The Court's reliance on that filing denied Petitioner his day in court. The Surrogate's reliance on this untimely filing to dismiss the proceeding is so far from the bounds of normal judicial practice as to constitute an abuse. The Surrogate had evidence before him to make a decision without the default probate decree. If he had done so it would have changed the issues on appeal. However, the Surrogate's actions, and the manner in which the Appellate Courts of New York have failed to address the important issues involved warrants review by this Honorable Court. This matter is important

because the concept that a trial court can act with such disregard of basic legal principles, (confrontation, rules of evidence, etc.) and the Appellate Courts affirm it, raises the issue that due process is at risk.

IV. Without jurisdiction does notice satisfy the constitutional due process requirement for a full and fair opportunity to be heard?

The Surrogate made no factual finding as to the notice give to Petitioner from Massachusetts. The only evidence as to notice before the Second Department was Petitioner's letter of June 10, 1999 questioning and objecting to the Massachusetts Pre-Trial Notice & Order. (Appendix G)
The Second Department concluded that, "The petitioner received proper notice of the proceeding before the Probate Court of the Commonwealth of Massachusetts concerning the decedent's estate." (Appendix C)
This conclusion demonstrates the court failed to grasp that jurisdiction and findings on the merits are required to apply full faith and credit, not notice and default as applied herein. Under full faith and credit, once the issue of "subject matter jurisdiction had been fully litigated in the original forum, the issue could not be retried in a subsequent action between the parties. Durfee v. Duke, 375 U.S. 106 (1963)

> The defendant had elected not to appear at all. If, in the absence of appearance, the court had proceeded to judgment, and the present suit had been brought thereon respondent could raise and tried out the issue in the present action, because it would never have had its day in court with respect to jurisdiction.

Baldwin v. Iowa State Traveling Men's Assn., 283 U.S. 522

Petitioner on appeal attempted to address the issue of notice and the Catch-22 it presented on June 15, 1999 by including in his brief the following Argument:

> The Middlesex Probate Court did not reply to any of the numerous other letters and documents sent to the that Court as to the issue of jurisdiction starting September 13, 1996, days after Debra's death, and continuing thru the Spring of 1999. (R-142)
>
> Having had no response your Petitioner telephoned the Middlesex Probate Court prior to the return date for the Request for Pre-Trial Conference (R-138) made by Hill & Barlow. Said Request made no mention of the jurisdiction issue. Petitioner's call was to inquire if the Court was acting on his objections.
>
> Your Petitioner was advised that nothing had or would be considered as to that issue until he appeared in court to make such objections. Massachusetts entered an order on June 3, 1999 requiring your New York Petitioner to appear on June 15, 1999, or face the consequences.(R-338) On June 10, 1999, your Petitioner (decedent's husband), who was not and is not recognized in the Massachusetts Petition as Debra's surviving spouse (R-339), wrote to the Middlesex Probate Court to repeated his position. See Exhibit "A" (Appendix G hereof)

At this point of his brief, Petitioner reproduced the following excerpt from one of his first year law school study guides:

> b. JUDGMENT: If the trial court lacked jurisdiction, but erroneously failed to dismiss the action, any judgment rendered by it can obviously be appealed on this ground. However once the judgment becomes final (i.e., defendant fails to appeal within time allowed by law; or the judgment is erroneously affirmed on appeal notwithstanding lack of jurisdiction), whether the

defendant can thereafter raise the jurisdictional defect will depend on whether he actually appeared in the proceedings

(1) Where D has appeared in the proceedings and the judgment has become final, it cannot thereafter be attacked by D, even on jurisdictional grounds. It is conclusive where rendered, and if a state court judgment, in every other state. And, this is true whether or not any issue of jurisdiction was actually litigated in the proceedings...the judgment is conclusive on all points which were actually litigated or which could have been litigated in the action. (Chicot County Drainage v. Baxter State Bank, 308 U.S. 371)

(a) Rationale: This is an application of the res judicata effect of bar (infra, p. 192)
(b) The above rule applies even where D appeared only specially to attach the jurisdiction of the court. If he loses on his motion to quash (or other special appearance), he must thereupon defend the action or suffer a default judgment against himself.
Having raised the jurisdictional issue and lost, if the judgment becomes final, he is barred from ever raising it again later. (Baldwin v. Traveling Men's Assn., 283 U.S 522)

(2) Where D did not appear in the proceedings (default taken against him), D can always raise the jurisdictional objection even though the judgment has become final. He is allowed to "collaterally attack" the judgment—either by bringing an independent action to have it set aside, or by defending any action or proceedings by the plaintiff in attempting to enforce the judgment. In such a case, the court's lack of jurisdiction is a recognized defense to the

enforcement of the judgment; and the judgment is not entitled to "full faith and credit".

(See Conflict of Laws Summary) -pages 31 & 32-
CIVIL_PROCEDURE, by William A. Rutter
Gilbert Law Summaries: 4th Ed. 1972 Gardena, CA.

> On June 15, 1999, your Petitioner, facing this dilemma, remained at home and placed his daughter on the school bus and his faith in the due process of law and the integrity of Surrogate Weiner and the New York Courts.

Adding to Petitioner's legal dilemma was he knew the reality he could not afford to bring his doctors, neighbors and friends of decedent to a hearing in Massachusetts. Under the circumstances ,Petitioner knew that he could never properly or fully litigate the issues in Massachusetts. Therefore, it would be impossible to have a full and fair opportunity to be heard in Massachusetts. At that time, Petitioner's expectation that the Courts of New York would protect him and his daughter seemed reasonable under the circumstances. Now, Petitioner places his daughter's fate and his faith in this most Honorable of Court.

V. Does equal protection under the law require a court to protect the interests of an unrepresented infant?

At the center of this controversy is a fourteen year old child who is the daughter of Decedent and Petitioner.
A child whose mother contracted cancer when she was 14 months old and by the time the child was seven the cancer had effected her mother's brain to that point her father would ask her to watch her mother while he parked the car. (See Appendix I)
A child whose mother told her she was going on vacation, and thereafter continually said she would be coming home, but never did.
A child whose father agreed with a judge and a court appointed guardian ad litem that her interests would be best served by his entering into a proposed stipulation to settle the divorce actions and gain for the child economic security and independence from Respondents.
Unfortunately, Decedent died making the proposed stipulation to settle moot, because economic independence was impossible. The child's legacy, if her mother's domicile was other than New York would be under the control of Respondents. (See Appendix H)
Petitioner's Petition for Administration in New York, as well as his Special Appearance and Objections filed in Massachusetts, requested that a guardian be appointed for the property of the minor child. Included in the record before the Surrogate in this matter were the following facts and allegations:
a) the guardian ad litem reports in the divorce action in April 1996 stated it was in the child's best interest to sever her economic relationship with Respondents; and the second in February 1998 stated that the $1 million was too much of a discount of her interests in trusts. In light of her mother's death, the child was vested with assets, which had a minimum value of $4.2 million as of 12-31-96.

b) Respondents' allegations that Petitioner is "dishonest" and has a "conflict of interest" with his daughter.
c) Respondents' known misrepresentation on the death certificate.
d) Respondents reporting to the Massachusetts Probate Court in March 1999 the estate value of $930,000.
e) Petitioner's representation that he would assign all of his economic rights in Decedent's estate to his daughter, only retaining his status and rights as surviving spouse to utilize the 1994 New York Surviving Spouse Amendment to gain the economic security and independence for his daughter. (See Appendix J) Petitioner intended to attack the trusts, which control his daughter's assets. The Respondents are also beneficiaries as well as trustee of many of the trusts with discretion to spray the principle disproportionately. To themselves. The Respondent's attorneys had stated there may not be any principal when the child was entitled to distribution. (See Appendix H)
f) Respondents in the 3 years since decedent's death had made absolutely no distributions from said trusts or made any inquiry as to the needs, economic or emotional, of their niece, Decedent's daughter.
g) the undisputed fact that Decedent loved her daughter.
Petitioner has been and continues to be the sole support of the child. Petitioner cared for the ill Decedent from 1988 until December 1994, exhausting himself emotionally and financially until decedent went with Respondents for a vacation. The divorce action was commenced in January 1995 by the Respondents on the behalf of the Decedent. Respondents have made an ethics complaint in the State of New Jersey seeking Petitioner's disbarment alleging Petitioner engaged in a "fraudulent scheme" by failing to proffer the revoked 1994 will.
The facts and circumstances known by and presented to the Surrogate dictated the appointment of a guardian of the property for the Decedent's child. The most disturbing of

those facts and circumstances set forth above being Respondents' failure to explain the missing $3.3 million since Decedent's death in 1996.
In this context Joel Ezra, Esq., representing Petitioner at the time, in response to Respondents' motion to dismiss the New York proceeding and requesting an immediate hearing averred:

> To permit the dismissal of this petition, as sought by the Massachusetts petitioners, Patricia Flaherty, Linda A. Kacewicz and Michael P. Franchi to gain a tactical advantage to the detriment of the minor child of the deceased, could do nothing less than raise a public outcry that this Court has failed to protect the helpless child of Debra Lynch and thrown her to the wolves of misfortune from Massachusetts.

There has been no outcry in New York, where the Appellate Courts stated that, "we need not reach the petitioner's remaining contentions." (See Appendix C)

VI. Does the denial of appellate review without opinion evidence an arbitrary and capricious denial of due process?

The New York Court of Appeals, a state court of last resort has so far departed from the accepted and usual course of judicial proceedings as to make a mockery of the rule of law. This departure requires this Honorable Court's exercise of its supervisory power. The departure which the NY Court of Appeals sanctioned without opinion was the finding of the lower courts in New York that a Massachusetts default decree based upon known fraud was entitled to full faith and credit in the New York Courts. Moreover, the Court of Appeals failed, as did the Second Department, to render any opinion as the Petitioner's disturbing and fundamental

contentions. This case presents issues of importance beyond the particular facts and parties involved in that it demonstrates the failure of due process and equal protection under the law in today's society. This is a matter which involves two states (NY & Mass.) and six major law firms manipulating the Courts against a pro se litigant who happens to be a New Jersey attorney and member of your bar. This manipulation of the judicial process has allowed this litigant to be deprived of his rights without any court conducting a hearing and with absolutely no determination of jurisdiction in accord with the due process of law. This case highlights the failure and hypocrisy of "liberty and justice for all" in our Courts. How can known fraud be entitled to full faith and credit?

Due process demands an opinion to explain this apparent oxymoron.

How can this travesty be protected under the guise of due process of law? It was over a century ago in Dred Scott v. Sandford 19 How. 393 (1857), that this Honorable Court found a Negro not a citizen, and his owner given the protection of due process of law. A great man said then that this country could not long endure half free and half slave. Today I challenge this Honorable Court to recognize that this country can not long endure where there is one law for the rich who are represented by powerful and influential law firms and another for the ordinary citizens who are forced to proceed pro se because their cause is "not economically or politically attractive". This case demonstrates that in today's society with the lack of ethics of the legal profession and the apathy of the Courts any desired result can be obtained regardless of the truth of the matter. The merits of this particular matter are less important than the underlying issues which allowed the courts of New York and Massachusetts to act upon a known misrepresentation to deny your petitioner his day in court; where trial judges are weighed down by personal and political considerations. Where it appears appeal courts don't have the time or inclination to read the filings and

thereby sanction such variations from established and elemental principles of due process of law. Where the filings are not read and the courts relies on misrepresentations of respected attorneys. Where the courts are made aware of falsehoods, and after "due deliberations" do nothing about it. (Appendix A)

VII. How can equal protection and due process under the law be insured in the 21st Century?

> This Court once had a great tradition:
> "All men and women are entitled to their day in Court."
> That guarantee has now been conditioned on monetary worth. It now will read: "All men and women are entitled to their day in Court only if they have the means and the money."
>
> In Re Amendment to Rule 39, 500 U.S. 13 (1991)
> Honorable Thurgood Marshall, dissenting.

This matter illustrates that in the civil courts today there is no "Equal Justice Under the Law". The facts and circumstances demonstrate that justice is no longer blind to hear and weigh the truth of a matter. Justice now proceeds with eyes wide open to the real world where each individual and his/her Actions are considered in the context of modern society and all its prejudices.

Your Petitioner, a licensed New Jersey attorney for over 25 years and a member of your bar, is appearing pro se. This circumstance has not been by choice, but the economic and political reality of America today. Although it has clearly worked to Petitioner's disadvantage, these circumstances raise the key question of public importance for the 21st Century: "Is there Equal Justice Under the Law?"

Your Petitioner is not a member of any traditional minority. However, his views and values place him within the minority of Americans who truly believe in this great country's core values and ethics. In law school students are taught that lawyers and judges are officers of the court with the prime directive to pursue justice. As tools and guideposts there are judicial and professional codes of ethics. The reality in the American legal system is that the pursuit of justice has been forgotten.

The concept of "Equal Justice under the Law" sounds wonderful, but is it true?

How can it be true when there are separate classifications for litigants such as pro se and in forma pauperis? Petitioner is pro se in this matter, but has been an attorney for over 25 years, which is the only reason this case has gone this far. Petitioner knows for a fact that the pro se litigant is a recognized second class citizen procedurally as well as substantively. "...you know the old saying 'a person who represents himself has a fool for an attorney' I suggest..." In this matter, Petitioner has heard those same words directed to himself many times over the last six years. This prejudice is that a pro se litigant does not belong in court or his/her cause has no merit. The surreal manner in which the Courts of the state of New York have dealt with the elementary and substantial legal issues in this matter evidences this prejudice is real. In this matter, and as Petitioner believes is the situation in many other cases, this prejudice is substantive.

Petitioner has often said to friends and colleagues that he fears that in the courts today it is "liberty and justice for all that can afford it."

This Honorable Court can utilize its voice to remind all Americans, particularly the officers of the court, of their right, duty and obligation to "Equal Justice under the Law."

CONCLUSION

This Petition has two objectives. The first is to have this Honorable Court order a hearing in the State of New York on the merits. No Court, New York or Massachusetts, has to date conducted a fact finding hearing, taken testimony or made any factual findings as to the domicile of Decedent at the time of her death which is the controlling issue. Due process demands "a full and fair opportunity to litigate the issue". Boguslavsky V. Kaplan, 159 F.3d 715 (2nd Cir. 1998) The issue of subject matter jurisdiction will hinge on the factual finding of whether or not Decedent was mentally competent in December 1994, the ultimate issue being whether or not Decedent did formed or could form the requisite intent to change her domicile. The Decedent's death Certificate states she suffered from "Non Hodgkin's Lymphoma With Brain Metastases" and "Leukoencephalopathy With Dementia" for "Years". Decedent died 9-5-96, and "Years" (being at least two) indicates prima facie evidence that she lacked the requisite mental capacity as of September 1994 when there is no question New York was her residence and domicile. (See Appendix K: Death Certificate)

It is ironic that September 1, 1994 is the effective date of the change in the Surviving Spouse Law in the State of New York which set in motion the last seven years of litigation. That New York law made it necessary for Respondents to arrange to it that Decedent died either "Divorced" or not a New York domiciliary. (See Appendix J and Appendix L)

Five years after his wife's death, Petitioner, the surviving spouse, has been deprived of all his rights without any hearing or factual findings as to domicile, but according to the Courts of the State of New York with "due process of law".

The second objective is for this Honorable Court to insure that in the 21st Century that there is "Equal Justice Under the Law" It is hoped that this Honorable Court will recognize thru this case that the state courts have fallen victim to the

inherent problem of administrating 18th Century ideals of due process in the 21st Century. The guarantee of a day in court is at the very core of constitutional due process. The overriding intent of our system is to allow our citizens to come before a judge and/or his peers and tell their story. This system worked in Abraham Lincoln's day when he would follow the circuit court and hear a client's story over a beer one night and the next day present the case. Clients spend years and thousands of dollars on lawyers to avoid going to court. The court systems have developed rules intended to protect procedural due process, such as motion practice and discovery, which are intended to uncover the truth. However, these procedures are misused in order to hide the truth. Litigation is now economic warfare, which is too often resolved by attrition. Dean John Sexton of NYU Law School speaks of the need for attorneys to be philosopher priests in our society where the law is the American moral compass. Dean Sexton talks of the need for lawyers to seek justice, but he recognizes that the call often goes unanswered. His position appears to echo that the law is the handmaiden of economic power and supports the status quo.

Your Petitioner sees himself as a poor philosopher priest who has given up everything, including his career, in his failed attempt to save his wife from cancer; his daughter from greed and himself from losing his religion:

> ....when the truth is found to be lies
> and the hope within you dies...

The ultimate test for the American Experiment in the 21st Century and which Petitioner presents to this Honorable Court: Equal Justice under the Law.

It is requested that this Honorable Court grant the Writ and set the matter down for argument or, in the alternative remand the matter to the New York trial court for a hearing on subject matter jurisdiction.

If this Honorable Court feels it must deny the Writ, it is Petitioner's most heartfelt plea that your decision explain how and why the probate decree in Massachusetts, which is based on the known misrepresentation that Petitioner's wife was "Divorced", is not the fruit of the poisonous tree.

If it is within the discretion of the Courts in New York to accept known fraud and entitle it to full faith and credit, we the people have a right to know.

God Bless America

Respectfully submitted,

Dean Lynch, pro se
Petitioner

The within Petition is dedicated to IRA HAYES, dec. U.S.M.C.

APPENDIX TABLE OF CONTENTS

PAGE

Order Denying Leave to Appeal Court of Appeals 31
Appendix A

Order of Appellate Division Second Department.....32
Denying Reargument & Leave to Appeal
Appendix B

Appellate Division Second Department Decision.....33
Appendix C

Rockland County, New York Surrogate Decision 35
and Order
Appendix D

Middlesex County, Massachusetts,.....36
Probate Petition/Decree and Memorandum of Decision
Appendix E

Transcript of Middlesex Court June 15, 1999.....39
as to default probate decree
Appendix F

Letter from Petitioner to Middlesex Court 43
June 10, 1999
Appendix G

Letter from Respondents' Counsel.....46
to Rockland Court April 16, 1998
Appendix H

PAGE

Admission Sheet December 1, 1993 of Decedent 49
To DANA FARBER CANCER INSTITUTE
Appendix I

Excerpt from NEW YORK TIMES 51
October 1, 1994
Appendix J

Death Certificate of Decedent 53
Appendix K

Affirmation of Joel Ezra, Esq. 55
April 20, 1999 Appendix L

Note: Appendix D thru Appendix L are taken from New York Record on Appeal, which is 345 pages.

Filed 9-20-2001
STATE OF NEW YORK,
COURT OF APPEALS At a session of the Court,
held at Court of Appeals
Hall in the City of Albany
on the twentieth day of
September 2001

PRESENT, Hon. Judith S. Kaye, Chief Judge, presiding.
2-10 Mo. No. 832
In the Matter of Debra Lynch,
&c., deceased.

Dean Lynch,
Appellant;

Patricia Flaherty, et al.,
Respondents.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is ORDERED, that the said motion be and the same hereby is denied.

s/_____
Stuart M. Cohen
Clerk of the Court

APPENDIX A

Filed 3-13-2001
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT
5952G C/mm
CORNELIUS J. O'BRIEN, J.P.
ANITA R. FLORIO
LEO F. McGINITY
DANIEL F. LUCIANO, JJ.

1999-09132
DECISION &
ORDER ON MOTION
In the Matter of Debra Lynch, etc., deceased.
Dean Lynch, appellant;
Patricia Flaherty, et al., respondents.

Motion by the appellant, inter alia, for reargument of an appeal from order of the Surrogate's Court, Rockland County, dated September 8, 1999, which was determined by decision and order of this court dated January 22, 2001, or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this court.

Cross motion by the respondents to impose costs and sanctions upon the appellant.

Upon the papers filed in support of the motion and cross motion and papers filed in opposition thereto, it is

ORDERED that the motion and the cross motion are denied.

O'BRIEN, J.P. FLORIO, McGINITY and LUCIANO, JJ., concur.

ENTER: James Edward Pelzer, Clerk
March 15, 2001

APPENDIX B

Filed 1-22-2001
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT
ENTERED January 22, 2001 4159B
U/jv

_____AD2d_____ Argued-November 17, 1999

CORNELIUS J. O'BRIEN, J.P.
ANITA R. FLORIO
LEO F. McGINITY
DANIEL F. LUCIANO, JJ.

1999-09132

DECISION & ORDER

In the Matter of Debra Lynch, etc., deceased.
Dean Lynch, appellant;
Patricia Flaherty, et al., respondents.

Dean Lynch. Tappan. N.Y., appellant pro se
Birbrower, Montalbano, Condon & Frank. P.C., New City. N.Y. (Andrea Birnbaum Herbst of counsel), for respondents.

In a proceeding to obtain letters of administration for the Estate of Debra Lynch, the petitioner appeals, as limited by his brief, from so much of an order of the Surrogate's Court, Rockland County (Weiner, S.), dated September 8, 1999, as granted that branch of the objectants' motion which was, in effect, to dismiss the petition for lack of jurisdiction.

ORDERED that the order is affirmed insofar as appealed from. with costs payable by the appellant personally.

The petitioner received proper notice of the proceeding

APPENDIX C

before the Probate Court of the Commonwealth of Massachusetts concerning the decedent's estate. Furthermore, the decedent's1995 will was admitted to probate in Massachusetts. Therefore, the Surrogate's Court providently exercised its discretion by giving full faith and credit to the Massachusetts probate decree and in granting that branch of the motion which was to dismiss the petition for lack of jurisdiction (see Matter of Brown,
120 Misc 2d 799, 804; Matter of Emmons, 93 Misc 2d 615; see generally, Matter of Acheson, 28 NY2d 155, 162. cert denied 404 US 826).

In light of our determination, we need not reach the petitioner's remaining contentions.

O'BRIEN, J.P. FLORIO, McGINITY and LUCIANO, JJ., concur.

ENTER: James Edward Pelzer, Clerk
January 22, 2001

APPENDIX C

Filed 9-8-1999
SURROGATE'S COURT OF THE STATE OF NEW YORK
ENTERED 9-8-1999

----------X

ADMINISTRATION PROCEEDING
DECISION and ORDER
Estate of DEBRA LYNCHa/k/a Debra L. Lynch & Debra Franchi, Deceased.
File No. 98600

----------X

Alfred J. Weiner, Surrogate:

In this administration proceeding, a motion has been made by the temporary executors of decedent's estate who were appointed pursuant to a decree of the Middlesex County Probate Court, State of Massachusetts on January 21, 1999, for leave to intervene and to dismiss this proceeding. The application is opposed by petitioner.

Decedent's last will was admitted to probate and the temporary executors were appointed executors of her estate pursuant to a decree dated June 15, 1999. Accordingly, the motion for leave to intervene is granted and this proceeding for letters of administration is dismissed for lack of jurisdiction since the last will has been admitted to probate and executors have been duly appointed. In re Szalkiewicz's Will, 199 Misc 262.

This decision constitutes the order of the court.

Dated: New City, New York s_____
September 8, 1999 Surrogate

To: Ezra & Howe, Attys. for Petitioner
Birbrower, Montalbano, Condon & Frank, P.C., Attys. For Intervenors

APPENDIX D

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department
Middlesex Division Docket 97P3465

Probate of Will Without Sureties

Name of Decedent Debra Lynch a/k/a Debra L. Lynch
Domicile at Death 16 Westcliff Road, Weston, Middlesex, MA 02493
Date of Death September 5, 1996
Name and address of Petitioner(s) Patricia Flaherty 111 Rockland Street, Natick, MA 01760; Linda A. Kacewicz 225 Narragansett Bay Avenue, Warwick, RI 02889; Michael P. Franchi 241 Perkins Street #C-2, Jamacia Plain, MA 02130
Status Siblings/Named Executors Named Temporary Executors

Heirs at law or next of kin of deceased including surviving spouse:

Name Residence Relationship
(minors and incompetents must be so designated)

Madeline S. Lynch 101 Greenbush Road, Tappan, NY 10983 Daughter (minor)

That said decedent left a will------herewith presented, wherein your petitioner(s) is/are named ---- temporary and permanent Executors wherein the testatrix had requested that your petitioner(s) be exempt from giving surety on ---their bond(s).

APPENDIX E

(X) The petitioner(s) herby certify that a copy of this document, along with a copy of the decedent's death certificate has been sent by certified mail to the Division of Medical Assistance, P.O. Box, Essex Station, Boston, Massachusetts 02112.

Wherefore your petitioner(s) pray that said will---may be proved and allowed, and that ---they be appointed temporary and permanent executors thereof---/without surety on --their bond(s) and certify under the penalties of perjury that the statements herein contained are true to the best of his/her/their knowledge and belief.

Dated 10/20/98 Signatures(s) s/ Patricia Flaherty

FILED: November 24, 1999 s/ Linda A. Kacewicz

s/ Michael P. Franchi

The undersigned hereby assent to the foregoing petition and to the allowance of the will without testimony.

DECREE

All persons interested having been notified in accordance with the law or having assented and no objections being made thereto, it is decreed that said instrument(s) be approved and allowed as the last will and testament of said deceased and that the said petitioner(s) Patricia Flaherty of Natick in the County of Middlesex, Linda A. Kacewicz of Warwick in the State of RhodeIsland and Michael P. Franchi of Jamaica Plain in the Countyof Suffolk be appointed execut_thereof, first giving bond with sureties for the due performance of said trust, together with the Memorandum of Decision which is filed and incorporate herewith.

Date June 15, 1999 s/ Beverly Weinger Boorstein

Justice of the Probate and Family Court

Note: Petition & Decree are one document on one sheet of paper, Memorandum of Decision was attached and incorporated by reference.

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION DOCKET NO. 97P3465

IN RE: ESTATE OF DEBRA LYNCH
FILED: JUNE 15, 1999

MEMORANDUM OF DECISION

Respondent, Dean Lynch, the objecting party having failed to appear for pre trial on June 15, 1999; and
Respondent having sent a letter to the Trial Department of this Court dated June 10, 1999 in which he, a lawyer by profession, raises the issue of the jurisdiction of this court when the issue, if any, is not whether or not the court has jurisdiction over Respondent; and
the pre trial notice having specifically state that the case may be ordered to immediate trial on the date of the pre trial if it appears that one party, through a failure to appear at the Pre trial Conference or otherwise will not present a case;
the respondent not having raised the conventional objections, viz the issue of domicile or invalidity of the will due to undue influence, lack of capacity or improper, execution, the court finds that he will not present a case and thus orders that the Will be allowed and executors be appointed.

June 15, 1999 s/_____
Date Beverly Weinger Boorstein
Judge Of the Probate and Family Court

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX COUNTY
CAMBRIDGE PROBATE AND FAMILY COURT
Docket No. 97-3465EP

IN RE: THE ESTATE OF DEBRA LYNCH

Before: Honorable Justice Beverely Weinger Boorstein

Date: June 15, 1999 TRANSCRIPT

Appearances: Attorney Richard Renehan
HILL & BARLOW
1 International Place
Boston, MA 02110
Index Witnesses Direct Cross Redirect Recross

No witnesses presented
Total Transcript Pages: 4
Re: Estate of Debra Lynch page 2
Proceedings

[...] indicates an inaudible or unintelligible portion of the tape.
Note: This is a 2-track tape (and not 4-track)' and therefore not always audible.
APPENDIX F
Note: The judge is inaudible on this tape

The Clerk: [Barely audible] In the matter of Lynch. For this record, this is Docket No.97 Probate 3466. Please approach the bench. Would counsel identify themselves for the record.

APPENDIX F

Mr. Renehan: Good morning, Your Honor. Richard Renehan of Hill and Barlow for the Petitioners. Let me tell you what it's all about in a nutshell, Your Honor. We have filed, in Probate, a will of a Massachusetts decedent. Her ex-husband, living in New York, says, (a) the will is invalid because she wasn't mentally competent, and (b) there's no jurisdiction in Massachusetts because we don't think she was legally a domicile here. She had lived here two years after the divorce.

There is a letter that came in after we filed that saying he will not show up. He has just a special appearance. My suggestion is, if the Court could set down a date when we could hear his challenge to jurisdiction, it would dispose of this thing. What's really going on is, he filed a Petition claiming intestacy in New York City, and he wants the New York Court to act on it before this Court acts, and we want the reverse. We want--

Re: Estate of Debra Lynch page 3

The Court: [Completely inaudible]

Mr. Renehan: Do you mean for his family to [...]? Well, that's an interesting-- I take it.

The Court: [Inaudible]

Mr. Renehan: All I know is what the Cou--

The Court: [Inaudible]

APPENDIX F

Mr. Renehan; Or a trial--

The Court: [Inaudible]

Mr. Renehan: I mean, I'd take [a default], Your Honor, because we're talking about a will that should be probated and---

The Court: [Inaudible]

Mr. Renehan: Let me add one footnote. I-- We signed a certificate that we gave him a copy of that pretrial order. We didn't-- I mean we were going to give it to him today. He didn't show up. We mailed him a copy of your order. But my pretrial memorandum says that we handed it to him today in anticipation of his appearance.

The Court: [Inaudible]

Mr. Renehan: Thank you, very much, Your Honor.
(End of Proceedings

APPENDIX F

Statement
I, Frances DiLeo, do hereby state that the foregoing is a transcript, prepared to the best of my ability, and insofar as was audible, of a barely audible two-track tape provide to us by Attorney Dean Lynch of the hearing in this matter of Estate of Debra Lynch, Docket No. 97-3465 before Justice Beverely Weinger Boorstein in the Cambridge Probate and Family Court on June 15, 1999.
1/19/2000s/_____
Date Frances DiLeo

AAA Court Transcription Specialists
139 Playstead Rd.
Medford, MA 02155
(781) 396-1124

NOTE: CERTIFIED COPY OF TAPE FROM COURT IN POSSESSION OF DEAN LYNCH ON WHICH JUDGE IS PARTLY AUDIBLE ON A STANDARD STEREO TWO TRACT SYSTEM.

APPENDIX F

DEANLYNCH
P.O. BOX 159
ATTORNEY AT LAW
1 KALISA WAY-SUITE 202
PARAMUS, NJ 07653-0159
201-986-1431
FAX: 201-986-0555

6-10-99

Trial Department
Probate and Family Court
208 Cambridge Street
P.O. Box 410480
East Cambridge, Mass. 02141-0005

Re: Estate of Debra Lynch
Docket no. 97P3465
Pretrial 6-15-99

Dear Sirs:
I am in receipt of the "Pre-Trial Notice & Order" dated June 3, 1999 as to the above captioned matter.
With all due respect, same is premature. Clearly said order is a form order as to a contested matrimonial matter and not a contested Estate matter.
In addition, your Honorable court has no jurisdiction over me or my daughter, Madeline. I have made a "special appearance" only which clearly contests the jurisdiction of your Honorable Court over the Estate of Debra Lynch, who died a resident of the state of New York.
Under the principles of conflict of laws, the estate process having been commenced earlier in time in the State of New York must be resolved first in New York. Therefore , full

APPENDIX G

faith and credit demands that your Honorable Court take no action until the New York litigation gas been fully resolved. It is only after the conclusion of the New York Litigation that your Honorable Court may acquire jurisdiction over the subject matter.

I can not appear or participate in any conference due to my "special appearance".

A review of your file will reveal that a substantial number of issues need to be resolved prior to the scheduling of a "Pre-Trial" conference. These include but are not limited to:

1) The appointment of the Petitioner;

2) The continued representation of Petitioners by Hill & Barlow;

3) Issue of conflict of interest relating to my late wife and our daughter
visa--a-vis Hill & Barlow;

4) Issue of missing $3.3 million from Estate assets occurring between
December 31, 1996 and March 8, 1999;

5) Issues of formal accounting by Petitioners with regard to their role as
Trustees and in relation to gifts to themselves and "spraying";

6) The use of the Power of the Court to protect the estate of my late wife
and the interests of our minor daughter.

As this Honorable Court is well aware I am proceeding pro se. This is not out of ego, but economic necessity. I have been unable to find a firm in Massachusetts willing to take on Hill & Barlow and Lourie & Cutler without a substantial retainer.

APPENDIX G

Again, I would respectfully request that this Honorable court take no action until the issues are fully litigated in the State of New York.

Respectfully submitted,
s/
Dean Lynch, pro se

cc: Hill & Barlow
Lourie& Cutler
Honorable Justice Boorstein
Honorable Justice McGovern

APPENDIX G

_ Birbrower, Montalbano, Condon & Frank, P.C.
Attorneys and Counsellors at Law
67 North Main Street
P.O.Box 1070
New City, New York 10956-8070
(914) 634-7010
Fax(914) 634-8993

April 16, 1998

Hon. Alfred J. Weiner, A.J.S.C.
Supreme Court Rockland County
Rockland County Courthouse
Main Street
New City, NY 10956

Re: Lynch v. Lynch
Index No. 1109-95

Dear Judge Weiner:
We carefully read the report of the guardian ad litem and the analysis of his accountant and find that each has serious shortcomings. The guardian ad litem admits that his report was based upon a "limited" review and "without a thorough analysis and complete inspection of the books and records". His accountant's report fails to apply any discount even though his letter to the guardian ad litem of January 31, 1998 states "In valuing a partial interest, a discount is normally applied for lack of marketability, lack of transferability, and such other factors." Further, it appears that there was no analysis or consideration of what the underlying trusts provide.
For example, under the Sea Breeze Trust Madeline receives her one-fifth interest outright as tenant-in-common with the

other beneficiaries twenty (20) years after the death of the survivor of the initial trustees, Mary V. Franchi and Richard V. Saletta. Further, a consensus of at least 55% of the Trust beneficiaries is required in order to mortgage, acquire, sell, or convey any of the Trust real property.

Each of the several Trusts has its own provisions which, like these, have a significant impact on value. The Kinmonth Realty Trust terminates upon the last to occur of the death of Pasquale Franchi (Debra Lynch's father) or June 6, 2015. During the term of that Trust the principal may be sprayed disproportionately among the beneficiaries based upon their respective needs. The Trustees of that Trust are the Franchi children. The Bear Hill Development Trust has the same spraying provisions and continues until the death of Pasquale Franchi. The KCN Realty Trust terminates twenty (20) years after the death of the last to die of four (4) persons unless the beneficiaries agree to an earlier termination. Pasquale Franchi is the sole Trustee of that Trust, The Bear Hill Development Trust and the Depasulumi Trust which terminates on his death unless the Franchi children agree to an earlier termination. With each and every Trust, Madeline must be living at termination to receive a share and there must be assets on hand at that time.

We, respectfully request the Court' permission to hire an independent valuation expert to provide an informed analysis to the Court. We believe that a considered report will truly be invaluable to the Court in the decision making process. All that is presently before the Court is a report that now says $1,000,000 is not enough without specifying what the actual value of the Trust interests amounted to when the stipulation was made. That report admittedly was prepared without a thorough investigation. Clearly, it is in the best interest of Madeline Lynch that an accurate value based upon a complete analysis of the facts be established. I expect that

Mr. Lynch would necessarily agree as, given his opinion of the Franchi Family, he would not wish his daughter to continue her involvement in its financial affairs as a beneficiary of Trusts which they control which Trusts provide her with no absolute assurances.

The expert we would propose is James Lippert, C.P.A. of Eleven Oaks Consulting, LLC. Mr. Lippert is a senior Member of the American Society of Appraisers (ASA) and a retired senior partner of Ernst & Young. I have spoken to Mr. Lippert who indicated his willingness to travel to Massachusetts to review the information necessary to this task. A copy of his firm brochure is enclosed for the Courts consideration.

It should be noted for the Court's file that the guardian ad litem was previously advised that Madeline's interest in The Madeline S. Lynch Revocable Trust dated 6-28-95 could not be renounced as Debra Lynch had a pourover Will with her estate being added to that Trust. Accordingly, contrary to the report of the guardian ad litem this trust should not be considered in the group of Trusts to be renounced.

Very truly yours,
BIRBROWER, MONTALBANO,
CONDON & FRANK, P.C.
s
KEVIN F. HOBBS
cc: Dean Lynch, Esq.
Joseph P. McGlinn, Esq.

NOTE: Emphasis added & as to the issue of "limited review..." "apply any discount" Respondents supplied and controlled information given Mr. McGlinn which did not include copies of the complete " books and records". Respondents set forth Sea Breeze, which owns 134 rental unit in Nahant, MA, value as $1.2 million, real estimated value $10 million to $12 million.

APPENDIX H

DANA-FARBER CANCER INSTITUTE
44 BINNEY STREET
BOSTON, MA 02115
(617) 632-3000

Name of Patient: Debra E. Lynch Number: 13-72-01

December 1, 1993 (continued)
Due to the patient's progressive neurologic deterioration, the patient was initiated on chemotherapy on 11/24/93, receiving CTX 1,000mg/m2 IV Day 1, Decadron 30mg IV Day 1, and VCR 1.4mg/m2 (maximum 2.0mg IV Day 1). She is now admitted for high dose MTX.
The patient tolerated her initial chemotherapy without complications, and has done well in the interim with only difficulty with sleeping.
PAST MEDICAL HISTORY: 1) Tonsillectomy and adenoidectomy. 2) G1P1. 3) Lymphoma, as above.
ALLERGIES: No known drug allergies.
MEDICATIONS: None.
PHYSICAL EXAMINATION: To be performed on admission.
LABORATORY: To be preformed on admission.
IMPRESSION: Ms. Lynch is a 40 y.o. white female, now with relapse with lymphomatous meningitis.
As mentioned previously, her options for therapy are limited in that she has previously received whole brain XRT, as well as having suffered extensive neurological complications due to this treatment. In this light, a palliative attempt at chemotherapy was advised and the patient received Day 1 CTX, VCR, and Decadron, without significant complications. She presents today for Day 8 high dose MTX.

APPENDIX I

The patient's family and the patient, to the extent that she can understand it, is aware that there are significant risks with chemotherapy, particularly high dose MTX, with respect to development of leukoencephalopathy which could be severe, leading to either coma or death. The patient's family and the patient are aware of these dreadful side effects.

In that this is palliative chemotherapy, we have at this point decided to hold on the placement of an Omaya reservoir for intrathecal chemotherapy, and that we will observe her response to high dose MTX which should have adequate penetration into the CNS parenchyma, as well as into the CSF. If however, her response is not adequate, or if she has further deterioration, considerations for our placement of an Omaya reservoir with IT Ara-C would be given
She will be admitted today for high dose MTX. Care with respect to the patient's hydration must be given to assure proper excretion of the MTX. The patient will be admitted and hydrated vigorously, with D5W with 100mEq of HCO3 and 20mEq of KCl
per liter at 125cc's/hour/m2 for 8-12 hours. When the urine ph is greater than 7.0, MTX 3 grams/m2 will be administrated IV over two hours. Hydration will then continue for another 12 hours in an attempt to maintain urine output greater than

---

T#: 1103-0731
ADMISSION SUMMARY- INPATIENT CHART COPY-
PRINTED 12/01/93

NOTE: Emphasis added

APPENDIX I

A NEW YORK LAW GIVES MORE RIGHTS TO SPOUSES

(The New York Times - 10/1/94)

by: Deborah M. Rankin

The final and most controversial element of a 1992 New York law that drastically expands the inheritance rights of spouses took effect last month.

The law prevents someone from tying up substantially all of a surviving spouse's share of an estate in a trust.

Most states have long had some sort of law that enables a surviving spouse, even if disinherited, to claim a minimum share of a deceased spouse's estate outright. In New York, the survivor's share was generally half of the estate if the person had no descendants, or a third if the person had descendants.

Before 1992, New York allowed this rule to be satisfied if the deceased put the assets in a trust instead of leaving the estate assets directly to the surviving spouse.

To bring New York in line with some other states and to protect the rights of survivors - typically women who outlive their mates - legislators approved a gradual change two years ago.

From the beginning of 1992 through August of this year, the law said that if the property of the estate was put into a trust for the benefit of the surviving spouse, the survivor could not challenge the estate as long as he or she got $50,000 outright, up from $10,000 before.

As of Sept. 1, property placed in trust for the benefit of the surviving spouse will no longer do. Now, even if all of the late spouse's assets are placed in trust for the benefit of the survivor, the survivor can elect to take a third of the

estate outright or $50,000, whichever is more. If survivors want the money outright, however, under the new law, they must give up any interest in the trust.

"The point is a trust doesn't work anymore".

The survivor's ability to break the trust throws a wrench in some family business plans.

If the spouse chooses, he or she can break the trust and be come on active owner of the business.

Even though he has yet to see a single case like this, he said, "You can bet that within the next four or five years, a substantial case will come up".

APPENDIX J

The Commonwealth of Massachusetts 399-96
Standard Certificate of Death

DEBRA L LYNCH FEMALE
DOD SEPTEMBER 5, 1996
PLACE OF DEATH : NEWTON, MIDDLESEX, BraeBurn Nursing Home
SS# 013-44-3233
WHITE 4 YEARS COLLEGE
Age 42 DOB Dec. 5, 1953 place Newton, Mass.

marital status DIVORCED last spouse DEAN LYNCH
occupation ARTIST-FREE LANCE

residence 16 WESTCLIFF RD. WESTON, MIDDLESEX, MASS. 02193

parents PASQUALE FRANCHI ITALY MADELINE CORSI MASS.

informant PATRICIA FRANCHI FLAHERTY 111 ROCKLAND ST. NATICK, MASS, SISTER

funeral director ANDREW J. MAGNI license # 5066

place of disposition LINWOOD CEMETERY WESTON, MASS.

date of disposition SEPT. 9, 1996 facility ANDREW J. MAGNI FUNERAL HOME 365 WATERTOWN ST. NEWTON, MASS. 02158

APPENDIX K

cause of death between onset & death

PNEUMONIA DAYS

NON HODGKIN'S LYMPHOMA WITH BRAIN METASTASES YEARS

LEUKOENCEPHALOPATH
WITH DEMENTIA YEARS

autopy ? NO refer to m.e? NO

s/ CYNTHIA P. ZARA, MD 332 WASHINGTON ST. WELLESLEY HILLS, MASS 02181
license # 73186
r n pronouncement? YES
when SEPT. 5, 1996 10:10 pm CATHERINE JOHNSON, RN 159629
date of burial permit issued SEPTEMBER 9, 1996 date of record SEPT. 9, 1996

s/ WILLIAM G. ENGLISH -NEWTON TOWN CLERK

NOTE: Emphasis added

APPENDIX K

SURROGATE COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

X
ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH AFFIRMATION
a/k/a Debra L. Lynch and Debra Franchi
Deceased----------
X
STATE OF NEW YORK)
COUNTY OF NASSAU) s.s.

JOEL S. EZRA, ESQ. , an attorney duly admitted to the practice of law in the Courts of the State of new York, affirms the following under penalties of perjury:

1. I am the attorney for Dean Lynch, the petitioner herein.
2. I make this affirmation to supplement the affidavit made by Dean Lynch in opposition to the application of respondents.
3. Having reviewed the scenario that has unfolded in this matter and the facts herein, it appears that this proceeding encompasses the exact set of circumstances that was envisioned under the change in the law in 1994 relating to surviving spouses. It is this scenario which our legislature intended to correct.
4. Simply stated, under the old law, the surviving spouse, after exhausting all the assets of the marriage, is left at the mercy of the Trustees (the respondents herein), who permitted the exhaustion of all the marital assets by not tendering any funds from the Trusts to Debra Lynch during her lifetime.
5. The intent of any Trust is to benefit its beneficiaries In this case, the trustees withheld aid to Debra Lynch and her spouse during Debra's lifetime.
6. The 1994 Surviving Spouse Law amendment recognized the reality that in-laws will always be in-laws, and will in all ways treat the surviving spouse as an outsider, at best.

APPENDIX L

7. I draw to this Court's attention that at the matrimonial settlement conference, that the Franchis agreed to fund a trust for Madeline with $1,000,000.00. The Franchis failed to fund the Trust. Based upon Mr. McGlinn's determination as to the value of Debbie Lynch's interest in those Trusts, the failure to fund the Trust inured to the benefit of the respondents herein who, as remaindermen of the Trusts, would increase their wealth substantially. It is my understanding that Mr. McGlinn indicated to this Court that Debra's share of the Trusts was somewhere in the vicinity of $4.2 million dollars, and that the Franchis reneged on funding the discounted Trust for Madeline from $4.2 million dollars in value to $1,000,000.00 which was the agreed settlement.

8. If this Honorable Court washes its hands of this matter and sends petitioner and his infant daughter to Massachusetts for their hearing, the likelihood of petitioner being able to bring his witnesses to Massachusetts and to mount a sufficient prosecution, diminishes dramatically.

9. In view of the foregoing, I respectfully urge that this Court exercise its jurisdiction, especially in view of the clear intent of the respondents herein to prohibit the infant, Madeline Lynch, from obtaining that which is due to her.

WHEREFORE, it is respectfully urged that the motion of respondents be denied in all respects, except in permitting respondents to intervene herein, and that the relief sought in the petition of petitioner be granted in all respects.

Affirmed this 20th day of April, 1999 s/_____
JOEL S. EZRA

APPENDIX L